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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

GLAS-WELD SYSTEMS, INC., an Oregon
corporation,

Plaintiff,

v.

MICHAEL P. BOYLE, dba SURFACE
DYNAMIX

Defendant.

Case No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**

Jury Trial Requested

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For its complaint against defendant Michael P. Boyle, dba Surface Dynamix, Glas-Weld Systems, Inc. ("Glas-Weld") alleges as follows:

INTRODUCTION

1.

This is a patent infringement action arising out of Michael P. Boyle's unauthorized making, using, selling or offering to sell Glas-Weld's patented technology after his departure from Glas-Weld, including but not limited to, improperly engaging in these infringing activities with Glas-Weld's own customers.

PARTIES

2.

Glas-Weld is a corporation formed under the laws of Oregon and having a principal place of business at 20578 Empire Blvd., Bend, Oregon 97701.

3.

On information and belief, Michael P. Boyle is a citizen of Oregon having a residence at 66932 Sagebrush Lane, Bend, Oregon 97701.

4.

Surface Dynamix is an assumed business name registered with the Secretary of State for the State of Oregon to Mr. Boyle, with a listed principle place of business as P.O. Box 8237, Bend, Oregon 97708. On information and belief, Surface Dynamix is owned and operated by Mr. Boyle and his agents and has a place of business at 19889 8th Street, Bend, Oregon 97701.

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JURISDICTION AND VENUE

5.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this is an action arising under the patent laws of the United States, more particularly, 35 U.S.C. § 271 *et seq.*

6.

This Court has personal jurisdiction over Mr. Boyle, dba Surface Dynamix, because Mr. Boyle resides and regularly does business in Oregon.

7.

Venue as to Mr. Boyle, dba Surface Dynamix, is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 in that Mr. Boyle resides and regularly does business in Oregon.

FACTS

8.

Glas-Weld was founded in 1982 and for the past thirty (30) years has been an international industry leader in the field of windshield repair. Glas-Weld offers high-quality and innovative glass repair products and services, and owns several issued patents relating to same.

9.

On September 23, 1997, U.S. Patent No. 5,670,180 (“the ‘180 Patent”), entitled “Laminated Glass and Windshield Repair Device,” was duly and legally issued to Glas-Weld by the United States Patent and Trademark Office. The named inventors on the ‘180 Patent are Randy L. Mackey and Robert A. Beveridge. Glas-Weld is the current

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and sole owner of the '180 Patent. A true and correct copy of the '180 Patent is attached hereto as Exhibit A.

10.

On May 24, 2005, U.S. Patent No. 6,898,372 ("the '372 Patent"), entitled "Lamp System for Curing Resin in Glass" was duly and legally issued to Glas-Weld by the United States Patent and Trademark Office. The named inventors on the '372 Patent are the defendant Mr. Boyle and Randy L. Mackey. Glas-Weld is the current and sole owner of the '372 Patent. A true and correct copy of the '372 Patent is attached hereto as Exhibit B.

11.

The '180 Patent and the '372 Patent are presumed valid under 35 U.S.C. § 282.

12.

Mr. Boyle was formerly employed as president of Glas-Weld. Mr. Boyle was responsible for research and development of new glass repair technology for Glas-Weld, and as such, he had access to, and was intimately familiar with, all aspects of Glas-Weld's business, including its technology, trade secrets and customer lists.

13.

Although Mr. Boyle is named as an inventor on the '372 Patent, he assigned all of his ownership rights in the '372 Patent to Glas-Weld. Accordingly, Mr. Boyle has no right to practice the technology claimed in the '372 Patent.

14.

Nonetheless, after his departure from Glas-Weld, on or about August 5, 2009 Mr. Boyle began unlawfully marketing, advertising and selling products that infringe Glas-

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Weld's patents, including without limitation, the Halo Pro™ Curing Light and the DynaVac™ resin injector and/or substantially similar products under the name Surface Dynamix.

15.

Mr. Boyle also improperly and unlawfully misappropriated, *inter alia*, Glas-Weld's confidential customer lists and other proprietary information. On information and belief, Mr. Boyle has continued to unlawfully use Glas-Weld's customer list and other proprietary information to sell, or attempt to sell, infringing products to Glas-Weld's customers, thereby introducing unauthorized, inferior "knock-off" products and decreasing Glas-Weld's market share.

16.

Mr. Boyle's actions have irreparably harmed and damaged Glas-Weld and will continue to do so unless he is enjoined by the Court.

COUNT I
(Direct Infringement of the '180 Patent)

17.

Glas-Weld repeats and incorporates herein Paragraphs 1-16 of this Complaint.

18.

Mr. Boyle, dba Surface Dynamix, makes, uses, sells or offers for sale in the United States, or imports into the United States, resin injector products, including without limitation, Surface Dynamix's DynaVac™ products and substantially similar products, which embody the claims of the '180 Patent ("the '180 Accused Products").

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19.

Mr. Boyle, dba Surface Dynamix, has infringed and is infringing the '180 Patent by making, using, selling or offering for sale in the United States or importing into the United States the '180 Accused Products.

20.

Mr. Boyle, dba Surface Dynamix, had actual knowledge of the '180 Patent and knew or should have known that the '180 Accused Products embodied the invention claimed in the '180 Patent.

21.

Mr. Boyle, dba Surface Dynamix, knew or should have known that there was an objectively high likelihood that his actions constituted infringement of the presumptively valid '180 Patent, and engaged in these actions despite that risk. Therefore the infringement was and is willful.

22.

The infringement by Mr. Boyle dba Surface Dynamix has damaged Glas-Weld, and such infringement should be permanently enjoined by this Court.

COUNT II
(Direct Infringement of the '372 Patent)

23.

Glas-Weld repeats and incorporates herein Paragraphs 1-16 of this Complaint.

24.

Mr. Boyle, dba Surface Dynamix, makes, uses, sells or offers for sale in the United States, or imports into the United States, curing lamp products, including Surface

Dynamix's Halo Pro™ products and substantially similar products, which embody the claims of the '372 Patent ("the '372 Accused Products").

25.

Mr. Boyle, dba Surface Dynamix, has infringed and is infringing the '372 Patent by making, using, selling or offering for sale in the United States or importing into the United States the '372 Accused Products.

26.

Mr. Boyle, dba Surface Dynamix, had actual knowledge of the '372 Patent and knew or should have known that the '372 Accused Products embodied the invention claimed in the '372 Patent.

27.

Mr. Boyle, dba Surface Dynamix, knew or should have known that there was an objectively high likelihood that his actions constituted infringement of the presumptively valid '372 Patent, and engaged in these actions despite that risk. Therefore the infringement was and is willful.

28.

The infringement by Mr. Boyle, dba Surface Dynamix, has damaged Glas-Weld, and such infringement should be permanently enjoined by this Court.

COUNT III
(Contributory Infringement of the '372 Patent)

29.

Glas-Weld repeats and incorporates herein Paragraphs 1-16 and 23-28 of this Complaint.

30.

Mr. Boyle, dba Surface Dynamix makes, uses, sells or offers for sale in the United States, or imports into the United States, the '372 Accused Products without a resin injector.

31.

However, these '372 Accused Products sold without a resin injector are designed for use with a resin injector, and Surface Dynamix's website shows pictures of such '372 Accused Products coupled with Resin Injectors, with a request that purchasers indicate the type of resin injector with which the '372 Accused Products will be used. A printed copy of the Surface Dynamix website is attached hereto as Exhibit C.

32.

Accordingly, Mr. Boyle, dba Surface Dynamix, knew or should have known that selling the '372 Accused Products to customers who would use the '372 Accused Products with a resin injector would constitute infringement of the '372 Patent by these customers.

33.

These '372 Accused Products without the resin injector are a component part for the patented item claimed in certain claims of the '372 Patent.

34.

The '372 Accused Products without the resin injector are a material part of the patented item claimed in one or more claims of the '372 Patent.

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35.

Mr. Boyle, dba Surface Dynamix had knowledge that the '372 Accused Products without the resin injector are especially made for use with a resin injector so as to infringe the '372 Patent.

36.

Indeed, as shown by the Surface Dynamix website, Mr. Boyle, dba Surface Dynamix sold or offered for sale the '372 Accused Products without the resin injector with the intent and purpose that its customers would combine them with a resin injector and thereby infringe the '372 Patent.

37.

The '372 Accused Products without the resin injector do not have any substantial non-infringing uses.

38.

Accordingly, Mr. Boyle, dba Surface Dynamix has committed contributory infringement and is committing contributory infringement of the '372 Patent by making, using, selling or offering for sale in the United States or importing into the United States the '372 Accused Products.

39.

Mr. Boyle, dba Surface Dynamix knew or should have known that there was an objectively high likelihood that these actions constituted infringement of the presumptively valid '372 Patent, and engaged in these actions despite that risk. Therefore, the contributory infringement of the '372 Patent was and is willful.

40.

The contributory infringement by Mr. Boyle, dba Surface Dynamix, has damaged Glas-Weld, and such infringement should be permanently enjoined by this Court.

REQUEST FOR JURY TRIAL

41.

Plaintiff requests a jury trial.

PRAYER

WHEREFORE, plaintiff GlasWeld Systems, Inc. respectfully requests the following relief:

(a) That the Court find that Mr. Boyle, dba Surface Dynamix has infringed and/or is infringing the '180 Patent and award damages resulting therefrom;

(b) That the Court find that Mr. Boyle, dba Surface Dynamix has infringed and/or is infringing, directly and/or indirectly, the '372 Patent and award damages resulting therefrom;

(c) That the Court grant Glas-Weld injunctive relief enjoining Mr. Boyle, dba Surface Dynamix from manufacturing, using, selling, offering for sale, and/or importing products that infringe the '180 Patent and '372 Patent, including the '180 Accused Products and the '372 Accused Products;

(d) That the Court grant Glas-Weld all appropriate additional monetary relief, including an award of treble damages against Mr. Boyle, dba Surface Dynamix for willful infringement;

(e) That the Court find that this is an exceptional case under 35 U.S.C. § 285;

(f) That the Court award Glas-Weld its attorneys' fees, costs and interest incurred in this action; and

(g) That the Court grant Glas-Weld any additional relief, either in law or equity, as the Court determines is just and equitable.

DATED: December 17, 2012.

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/s/ Robert E. Barton

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